IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL
Second Appeal No. 1206/2001
(Old No. 181/1996)

Sunder Singh Pundir S/o Surat Singh Pundir,
R/o 109, Salwala, Pargana Central Doon,
Dehradun ....Plaintiff/Appellant.

Vs.

1- Smt. Rajeshwari Devi Widow of late Mohan Singh.
2- Deepak Negi.
3- Dhiraj Negi,
Sons of late Mohan Singh, R/o Village Adhiwala,
Pargana Parwa Doon, District Dehradun.
4- Ravindra Singh,
5- Swaraj Singh @ Ssheraj Singh
6- Narender Singh,
Sons of Attar Singh, R/o Village Adhoiwala,
Pargana Parwa Doon, District Dehradun.
7- Kaushal Raj Shah, S/o Govind Lal Shah,
R/o Lower Adhoiwala, Pargana Parwa Doon,
District Dehradun.
8- Satyapal Singh S/o Jagbir Singh,
R/o Village Kanwali, Pargana Central Doon
Dehradun ..... Defendnts/respondents.

Sri Rajendra Dobhal, learned counsel for the appellant.
None for the defendants/respondents.

(Hon'ble B.C. Kandpal,, J.)

This Second Appeal, U/S 100 C.P.C., has been preferred against the judgment and decree dated 16-2-1996, passed by District Judge, Dehradun in Civil Appeal No. 36/1994, Smt. Kalawti Vs. Smt. Rajeshwari Devi and others, dismissing the appeal and confirming the judgment and decree dated 28-11-1994, passed by the II Addl. Civil Judge, Dehradun in O.S. No. 364/1984, whereby the suit was dismissed.

2- Brief facts of the case are that the plaintiff/appellant Smt. Kalawati (now deceased and represented by her legal heirs) filed suit for cancellation of sale deed. According to the plaintiff Smt. Kalwati Devi she was owner of 2.80 acres of agricultural land in plot No. 1488 in Village Kanwali, Kendriya Doon. She alleged that she never executed sale deed dated 16-4-1969 for sale of 0.76 acre of land in favour of Smt. Janki Devi. Under the aforesaid sale deed 3 Bighas of land was also transferred to respondent Kaushal Raj Shah on 14.7.1983. Smt. Janki Devi died before filing suit, Smt. Kalawati filed suit for cancellation of the sale deed against the legal heirs of Smt. Janki Devi and Kushal Raj, in whose favour 3 Bighas land was transferred under the disputed sale deed.

3- The defendants contested the suit and alleged that the disputed sale deed was executed by Smt. Kalawati and 0.76 acre land of plot No. 1488 was sold to Smt. Janki Devi and possession was also delivered. The names of defendants were also mutated over the land in dispute.

4- The trial count framed issue in the case and thereafter parties produced evidence. The trial court after hearing learned counsel for the parties and perusing the evidence on record held that the plaintiff has not been able to establish that the disputed sale deed was not executed by her. Accordingly the suit was dismissed.

5- Feeling aggrieved, the plaintiff preferred appeal before the District Judge, Dehradun, which was also dismissed vide impugned judgment and decree dated 16-2-1996.

6- Being aggrieved by the impugned judgment and decree passed by the lower appellate court, the plaintiff has filed this second appeal before the Allahabad High Court, which has been transferred to this court, after creation on new State.

7- Heard learned counsel for the parties and perused the record.

8- The main contention of the plaintiff/appellant is that the plaintiff never executed the disputed sale deed and she did not put her thumb impression on it. D.W.2, Shyoraj Singh is the witness of sale deed. He has specifically deposed that Smt. Kalawati had put her thumb impression on the sale deed. D.W.3 is the handwriting expert, who had given affirmative report about the thumb impression of the plaintiff Smt. Janki Devi on the sale deed. Further the land under the disputed sale deed has been mutated in the names of the defendants/respondents in the revenue records. I am also of the view that the plaintiff/appellant has not been able to establish the case for cancellation of sale deed.

9- I have also perused the findings recorded by both the courts below. Both the courts below have recorded concurred findings of fact and no substantial question of law is involved in this second appeal.

10- Accordingly the appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated 4-12-2006
ISB